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**Cargo Point, L.P. and Teamsters Local Union 657,
affiliated with International Brotherhood of
Teamsters.** Case 16–CA–24330

March 31, 2006

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER,
AND KIRSANOW

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on June 15 and July 14, 2005, respectively, the Acting General Counsel issued the complaint on August 31, 2005, against Cargo Point, L.P. (the Respondent) alleging that it has violated Section 8(a)(1) and (3) of the Act.

On September 7, 2005, the Respondent filed an answer. By letter dated November 9, 2005, the Respondent withdrew the answer.

On December 21, 2005, the Acting General Counsel filed a Motion for Default Judgment with the Board. On December 27, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by September 14, 2005, all the allegations in the complaint could be considered admitted.

Here, although the Respondent filed an answer to the complaint, it subsequently withdrew its answer on November 9, 2005. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹

Accordingly, based on the withdrawal of the Respondent's answer to the complaint, and in the absence of good cause being shown for the failure to file an answer,

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

we grant the General Counsel's Motion for Default Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas limited partnership, has been engaged in the pickup and delivery of express packages at its facility located at 4040 Binz Engleman in San Antonio, Texas.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations within the State of Texas, derived gross revenues in excess of \$50,000 for the transportation of freight in interstate commerce under arrangements with, and as agent for, the common carrier, DHL Worldwide, a nationally known entity that is directly engaged in interstate commerce and operates between the various States of the United States. Thus, based on its operations described above, the Respondent functions as an essential link in the transportation of freight in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Teamsters Local Union 657, affiliated with the International Brotherhood of Teamsters (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Daniel Dean Davis	—	Owner
Javier Cortez	—	General Manager

On or about January 13, 2005, the Respondent, by Javier Cortez, at its Binz Engleman facility:

(a) interrogated an employee about the protected, concerted, or union activities of other employees by ques-

² On November 9, 2005, the Respondent's owner advised the Region that the Respondent intended to file for "Chapter 7, 'No Asset' bankruptcy protection." It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions of the bankruptcy code for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

tioning whether the employee's coworker was trying to start a union; and

(b) threatened to discharge an employee in retaliation for the employee's protected, concerted, or union activities, if the employee was trying to start a union.

In or about January 2005, the Respondent, by Daniel Dean Davis, threatened to discharge an employee if the employee engaged in protected, concerted, or union activities.

On or about February 11, 2005, the Respondent, by Javier Cortez, at its Binz Engleman facility:

(a) interrogated an employee about the employee's protected, concerted, or union activities by questioning whether the employee attended a union meeting;

(b) created the impression of surveillance of employees' protected, concerted, or union activities by telling an employee that there would be people watching the Union's hall; and

(c) threatened to discharge employees in retaliation for employees' protected, concerted, or union activities by telling an employee that whoever went to the Union's hall would be fired.

On or about February 11, 2005, the Respondent, by Daniel Dean Davis, interrogated an employee by asking the employee if he had attended a union meeting.

Sometime in or about February or March 2005, the Respondent, by Javier Cortez, promulgated an unlawful rule by instructing an employee not to discuss his wages with a coworker.

On or about June 14, 2005, the Respondent, by Daniel Dean Davis, threatened to retract a loan benefit if the employees selected the Union as their collective-bargaining representative.

On or about March 24, 2005, the Respondent discharged employee Steven Santa Cruz. The Respondent discharged Cruz because he formed, joined, or assisted the Union and engaged in other concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By interrogating employees about their protected concerted and union activities; threatening to discharge employees in retaliation for their protected concerted and union activities; creating the impression of surveillance of employees' protected concerted and union activities; instructing an employee not to discuss his wages with a coworker; and threatening to retract a loan benefit if the employees selected the Union, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By discharging employee Steven Santa Cruz because he formed, joined, or assisted the Union and engaged in concerted activities, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Steven Santa Cruz, we shall order the Respondent to offer Cruz full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed. We also shall order the Respondent to make Cruz whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent also shall be required to remove from its files all references to the unlawful discharge of Cruz, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Cargo Point, L.P., San Antonio, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their or other employees' protected, concerted, or union activities.

(b) Threatening to discharge employees in retaliation for their protected, concerted, or union activities.

(c) Creating the impression of surveillance of the employees' protected, concerted, or union activities.

(d) Promulgating an unlawful rule by instructing employees not to discuss their wages with coworkers.

(e) Threatening to retract a loan benefit if the employees selected Teamsters Local Union 657 affiliated with International Brotherhood of Teamsters (the Union) as their collective-bargaining representative.

(f) Discharging employees because they form, join, or assist the Union, or any other labor organization, or engage in other concerted activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Steven Santa Cruz full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make Steven Santa Cruz whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of Steven Santa Cruz, and within 3 days thereafter, notify him in writing that this has been done, and that the unlawful discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in San Antonio, Texas, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all cur-

rent employees and former employees employed by the Respondent at any time since January 2005.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 2006

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you about your or other employees' protected, concerted, or union activities.

WE WILL NOT threaten to discharge you in retaliation for your protected, concerted, or union activities.

WE WILL NOT create the impression of surveillance of your protected, concerted, or union activities.

WE WILL NOT promulgate an unlawful rule by instructing you not to discuss your wages with coworkers.

WE WILL NOT threaten to retract loan benefits if you select Teamsters Local Union 657 affiliated with International Brotherhood of Teamsters (the Union) as your collective-bargaining representative.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT discharge you because you form, join, or assist the Union, or any other labor organization, or because you engage in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Steven Santa Cruz full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make Steven Santa Cruz whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharge of Steven Santa Cruz, and WE WILL, within 3 days thereafter, notify him in writing that this has been done, and that the unlawful discharge will not be used against him in any way.

CARGO POINT, L.P.